



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**NOTICE OF MEETING**  
**Government Records Council**  
**April 30, 2013**

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 10:30 a.m., Tuesday, April 30, 2013 at the Department of Community Affairs ("DCA") offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 10:30 a.m. in Room 129 of the DCA.

**I. Public Session:**

- Call to Order
- Pledge of Allegiance
- Meeting Notice
- Roll Call

**II. Executive Director's Report:**

**III. Public Comment (First Session):**

- This first session of public comment is reserved solely for suggestions, views and comments relevant to proposed actions on the agenda. A second session of public comment will occur at the end of the meeting to provide an opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities.

**IV. Closed Session (if necessary):**

**V. Approval of Minutes of Previous Meetings:**

- March 22, 2013 Meeting Minutes
  - Open Session Minutes
  - There was no Closed Session

**VI. New Business – Cases Scheduled for Adjudication \***

**A. Administrative Disposition Adjudications with Recusals:**

1. David Herron v. NJ Department of Education (2011-350) (**Recusal DPV**)

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2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-15) (**Recusal SR**)
3. Bryan LaPlaca v. Morris County Prosecutor's Office (2012-179) (**Recusal SR**)

**B. Administrative Disposition Adjudications with no Recusals (Consent Agenda):**

4. Raymond Klepar v. Little Falls Township (Passaic) (2012-10)
5. Alecica McGhee v. City of Orange (Essex) (2012-92)
6. David Herron v. Township of Montclair (Essex) (2012-104)
7. John Paff v. Township of Wall (Monmouth) (2012-159)
8. Cynthia A. McBride v. Township of Moorestown (Burlington) (2012-283)
9. Juan F. Garcia v. County of Morris (2012-320)
10. Mike Petuskey v. Sacred Heart High School (Cumberland) (2013-2)
11. Maryann Sowell v. Ramsey Police Department (Bergen) (2013-3)
12. Derek Feuerstein (On behalf of FOP Superior Officers Lodge #164) v. University of Medicine & Dentistry of NJ (2013-15)
13. Mohamed F. El-Hewie v. Ridgewood Board of Education (Bergen) (2013-17)
14. John Campbell v. NJ Turnpike Authority (2013-33)
15. John Campbell v. NJ Turnpike Authority (2013-34)
16. John Campbell v. NJ Turnpike Authority (2013-35)
17. Brian Paladino v. NJ Department of Law & Public Safety, Division of Law (2013-46)
18. June Maxam (On behalf of North Country Gazette) v. Office of the Public Defender (2013-61)
19. Sabino Valdes v. Union City Board of Education (Hudson) (2013-63)
20. Luis Rodriguez v. Kean University (2013-70)
21. John Campbell v. NJ Department of Environmental Protection (2013-75)
22. John Campbell v. NJ Department of Environmental Protection (2013-76)
23. Linda A. Rinaldi v. NJ Department of Law & Public Safety, Division of Criminal Justice (2013-77)
24. Rosemarie Bellace v. City of Ocean City (Cape May) (2013-80)
25. Joseph Becker v. Township of Middletown (Monmouth) (2013-89)
26. Luis Rodriguez v. Kean University (2013-100)
27. Michael L. Shelton v. Manasquan Board of Education (Monmouth) (2013-104)
28. Kevin Joseph Franchetta v. Vineland Board of Education (Cumberland) (2013-106)
29. Stacie Percella v. City of Bayonne (Hudson) (2013-109)
30. Jeremy Fultz v. Jersey City Board of Education (Hudson) (2013-112)
31. Luis Rodriguez v. Kean University (2013-115)
32. Christopher J. White v. NJ Department of Treasury (2013-120)

**C. Individual Complaint Adjudications with Recusals:**

1. Paul Marzan v. NJ Department of Community Affairs, Division of Housing & Community Resources (2011-360) (**Recusal DL**)
2. Phillip Molnar (On behalf of Express-Times) v. Warren County Community College (2012-4) (**Recusal RBT**)
3. David Herron v. NJ Department of Education (2011-324) (**Recusal DPV**)
4. Sabino Valdes v. NJ Department of Education (2012-19) (**Recusal DPV**)
5. Sabino Valdes v. NJ Department of Education (2012-30) (**Recusal DPV**)

6. Claudia Vargas (On behalf of The Philadelphia Inquirer) v. NJ Department of Education (2012-126) (**Recusal DPV**)
7. Robert G. Dooley, Jr. v. City of Newark (Essex) (2011-257) (**Recusal SR**)
8. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-323) (**Recusal SR**)
9. Margaret Rieger v. Township of Livingston (Essex) (2011-333) (**Recusal SR**)
10. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-385) (**Recusal SR**)
11. Larry Kohn v. Township of Livingston (Essex) (2012-3) (**Recusal SR**)
12. Rashaun Barkley v. Essex County Prosecutor's Office (2012-34) (**Recusal SR**)
13. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-153) (**Recusal SR**)

**D. Individual Complaint Adjudications with no Recusals:**

14. Gary DeMarzo v. City of Wildwood (Cape May) (2009-61)
15. Joan McGee v. Township of East Amwell (Hunterdon) (2009-275)
16. Richard & Dawn Sabik v. Borough of Dunellen (Middlesex) (2011-222)
17. Paul Marinaccio v. Borough of Fanwood (Union) (2011-226)
18. Rita Roykovich v. West Milford Board of Education (Passaic) (2011-258)
19. Ken Schilling v. Township of Little Egg Harbor (Ocean) (2011-293)
20. Ken Schilling v. Township of Little Egg Harbor (Ocean) (2011-294)
21. Claudia Vargas (On behalf of The Philadelphia Inquirer) v. Camden City School District (Camden) (2011-315)
22. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-319)
23. Thomas DelloRusso v. NJ Department of Law & Public Safety, Division of State Police (2012-11)
24. John P. Schmidt v. Salem City Board of Education (Salem) (2012-14)
25. Paul Marinaccio v. Borough of Fanwood (Union) (2012-23)
26. Judith Papiez v. County of Mercer, Office of County Counsel (2012-52)
27. Judith Papiez v. County of Mercer, Office of County Counsel (2012-55)
28. Judith Papiez v. County of Mercer, Office of County Counsel (2012-65)
29. Henry Little v. NJ Department of Corrections (2012-70)
30. Harry B. Scheeler, Jr. v. Township of Mt. Laurel (Burlington) (2012-83)
31. John McGill v. NJ Department of Corrections (2012-90)
32. Virginia Ann Murphy v. Township of Washington (Gloucester) (2012-96)
33. Jeff Carter v. Franklin Fire District #2 (Somerset) (2012-101)
34. Colleen O'Dea v. NJ Department of Agriculture (2012-108)
35. Colleen O'Dea v. NJ Department of Treasury (2012-109)
36. John Paff v. Northern Valley Regional School District (Bergen) (2012-110)
37. Michael Palmer v. Irvington Police Department (Essex) (2012-123)
38. James E. Howell v. NJ Department of Homeland Security & Preparedness (2012-141)

**VII. Court Decisions of GRC Complaints on Appeal:**

**VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:**

**IX. Public Comment (Second Session):**

- An opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities.
- In the interest of time, speakers are limited to **five (5) minutes**.

## **X. Adjournment**

**\*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.**



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**Complaint Disposition Synopsis – April 30, 2013**

**Disclaimer: All summaries below are draft and are not final decisions until approved by the Council.**

**Administrative Disposition Adjudications with Recusals:**

1. David Herron v. NJ Department of Education (2011-350) – All Records Responsive to the Request Provided in a Timely Manner
2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-15) – No Records Responsive to the Request Exist
3. Bryan LaPlaca v. Morris County Prosecutor's Office (2012-179) - Complaint Voluntarily Withdrawn

**Administrative Disposition Adjudications with no Recusals:**

1. Raymond Klepar v. Little Falls Township (Passaic) (2012-10) - Complaint Voluntarily Withdrawn
2. Alecica McGhee v. City of Orange (Essex) (2012-92) - Complaint Voluntarily Withdrawn
3. David Herron v. Township of Montclair (Essex) (2012-104) - No Records Responsive to the Request Exist
4. John Paff v. Township of Wall (Monmouth) (2012-159) - Complaint Settled in Mediation
5. Cynthia A. McBride v. Township of Moorestown (Burlington) (2012-283) - Complaint Settled in Mediation
6. Juan F. Garcia v. County of Morris (2012-320) - Complaint Settled in Mediation
7. Mike Petuskey v. Sacred Heart High School (Cumberland) (2013-2) - Request not within the Council's jurisdiction to adjudicate.
8. Maryann Sowell v. Ramsey Police Department (Bergen) (2013-3) - Complaint Settled in Mediation
9. Derek Feuerstein (On behalf of FOP Superior Officers Lodge #164) v. University of Medicine & Dentistry of NJ (2013-15) - Complaint Settled in Mediation
10. Mohamed F. El-Hewie v. Ridgewood Board of Education (Bergen) (2013-17) - Complaint Settled in Mediation
11. John Campbell v. NJ Turnpike Authority (2013-33) - Complaint Settled in Mediation
12. John Campbell v. NJ Turnpike Authority (2013-34) - Complaint Settled in Mediation
13. John Campbell v. NJ Turnpike Authority (2013-35) - Complaint Settled in Mediation

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14. Brian Paladino v. NJ Department of Law & Public Safety, Division of Law (2013-46) - No Records Responsive to the Request Exist
15. June Maxam (On behalf of North Country Gazette) v. Office of the Public Defender (2013-61) - No Correspondence Received by the Custodian Regarding this Request
16. Sabino Valdes v. Union City Board of Education (Hudson) (2013-63) - All Records Responsive to the Request Provided in a Timely Manner
17. Luis Rodriguez v. Kean University (2013-70) - Complaint Voluntarily Withdrawn
18. John Campbell v. NJ Department of Environmental Protection (2013-75) - Complaint Voluntarily Withdrawn
19. John Campbell v. NJ Department of Environmental Protection (2013-76) - Complaint Voluntarily Withdrawn
20. Linda A. Rinaldi v. NJ Department of Law & Public Safety, Division of Criminal Justice (2013-77) - Complaint Voluntarily Withdrawn
21. Rosemarie Bellace v. City of Ocean City (Cape May) (2013-80) - Complaint Voluntarily Withdrawn
22. Joseph Becker v. Township of Middletown (Monmouth) (2013-89) - All Records Responsive to the Request Provided in a Timely Manner
23. Luis Rodriguez v. Kean University (2013-100) - No Denial of Access at Issue
24. Michael L. Shelton v. Manasquan Board of Education (Monmouth) (2013-104) - Complaint Voluntarily Withdrawn
25. Kevin Joseph Franchetta v. Vineland Board of Education (Cumberland) (2013-106) - Unripe Cause of Action
26. Stacie Percella v. City of Bayonne (Hudson) (2013-109) - Unripe Cause of Action
27. Jeremy Fultz v. Jersey City Board of Education (Hudson) (2013-112) - Complaint Voluntarily Withdrawn
28. Luis Rodriguez v. Kean University (2013-115) - All Records Responsive to the Request Provided in a Timely Manner
29. Christopher J. White v. NJ Department of Treasury (2013-120) - Unripe Cause of Action

#### **Individual Complaint Adjudications with Recusals:**

1. Paul Marzan v. NJ Department of Community Affairs, Division of Housing & Community Resources (2011-360)

REQUESTED DOCUMENTS: Application Material; Correspondence

RECORDS FORMAT REQUESTED: Copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends the Council find that although the Custodian denied access to the Complainant's OPRA request pursuant to Executive Order No. 26 (McGreevey 2002), the Complainant's OPRA request is invalid because the request fails to specifically identify any government records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App.

Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J.Super. 166, 180 (App. Div. 2007), or Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). As such, the Custodian has not unlawfully denied access to the Complainant's request, and the Council declines to determine whether the Custodian's asserted exemption applies to any potentially responsive records.

2. Phillip Molnar (On behalf of Express-Times) v. Warren County Community College (2012-4)

REQUESTED DOCUMENTS: Executive session minutes

RECORDS FORMAT REQUESTED: E-mail delivery

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian's response was legally insufficient and violated N.J.S.A. 47:1A-5.g and Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008) because the Custodian failed to respond in writing to each item contained in the Complainant's OPRA request.
2. The Custodian's demand that the Complainant complete an official request form is an impermissible limitation on access pursuant to Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009) and Carter v. Franklin Fire District No. 1 (Somerset), GRC Complaint No. 2011-73 (Interim Order July 30, 2012) because the Complainant submitted a letter request which clearly invoked OPRA and made clear the nature of the request.
3. The Custodian did not unlawfully deny access to the requested records based solely upon the sufficiency of the disclosed record's content. *See* Katinsky v. River Vale Township, GRC Complaint No. 2003-68 (November 2003). *See also* Kwanzaa v. Department of Corrections, GRC Complaint No. 2004-167 (March 2005), citing N.J.S.A. 47:1A-7(b).
4. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* examination of the unredacted executive session minutes for January 13, 2010, February 24, 2010, May 12, 2010, June 30, 2010, September 8, 2010, May 18, 2011, June 29, 2011 at 7:10 p.m., and September 7, 2011 at 6:35 p.m. and 8:45 p.m. to determine if any of the redacted portions of the minutes make reference to a building located at 445 Marshall Street in Phillipsburg, and if so, the validity of the Custodian's assertion that any attorney advice contained within said minutes, was properly redacted pursuant to N.J.S.A. 47:1A-1.1.
5. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph 4 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**

6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
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3. David Herron v. NJ Department of Education (2011-324)  
REQUESTED DOCUMENTS: Transcripts; Certifications; Licenses  
RECORDS FORMAT REQUESTED: Paper copies (delivery method unspecified)  
EXECUTIVE DIRECTOR'S RECOMMENDATIONS:
    1. The Custodian timely complied with the Council's December 18, 2012 Order by certifying that she re-redacted the responsive transcripts and sent same to the Complainant via e-mail and further identified those records that did not exist within the extended time frame.
    2. Although the Custodian unlawfully redacted grade point averages from the responsive transcripts pursuant to N.J.S.A. 47:1A-10, the Custodian timely complied with the Council's Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
  4. Sabino Valdes v. NJ Department of Education (2012-19)  
REQUESTED DOCUMENTS: Notice of Motion; Checks; Tenure Charges  
RECORDS FORMAT REQUESTED: Copies via U.S. Mail and inspection  
EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that the evidence of record supports that the Custodian never received the subject OPRA requests, and the Complainant has not provided any credible evidence to contradict the Custodian's Statement of Information certification. Thus, the Custodian did not unlawfully deny access to the Complainant's second (2<sup>nd</sup>) OPRA request No. 2.
  5. Sabino Valdes v. NJ Department of Education (2012-30)  
REQUESTED DOCUMENTS: Volume III appendix; Tenure Charges  
RECORDS FORMAT REQUESTED: On-site inspection  
EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that because the Custodian timely responded granting inspection of the responsive records, as is required pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), she did not unlawfully deny access to those records regardless of whether the Complainant chose not to avail himself of his right to inspection. N.J.S.A. 47:1A-6.



6. Claudia Vargas (On behalf of The Philadelphia Inquirer) v. NJ Department of Education (2012-126)

REQUESTED DOCUMENTS: Ethics Forms; Financial Disclosure Statements

RECORDS FORMAT REQUESTED: Copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends the Council find that in balancing the Complainant's need for the redacted street addresses contained on the requested records against the Custodian's need to keep the information confidential, non-disclosure of the street address is favored. The Complainant is currently in possession of the information she seeks, namely, whether the school board members reside in the City of Camden. Additionally, the education law does not require school officials to include addresses of real property owned on the financial disclosure statements. N.J.S.A. 18A:12-26. Thus, the Council's decision in Walsh v. Township of Middletown (Monmouth), GRC Complaint No. 2008-266 (Interim Order dated November 18, 2009), holding that the addresses contained on local government financial disclosure statements, is inapplicable here. As such, the Custodian has lawfully denied access to the street addresses contained on the requested records pursuant to N.J.S.A. 47:1A-1, on the basis that the disclosure of the street addresses would violate the citizens' reasonable expectation of privacy.

7. Robert G. Dooley, Jr. v. City of Newark (Essex) (2011-257)

REQUESTED DOCUMENTS: Personnel records – Title

RECORDS FORMAT REQUESTED: Paper copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian's Counsel has failed to establish in his request for reconsideration of the Council's February 26, 2013 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably, and failed to submit any evidence to the contrary. Thus, Counsel's request for reconsideration is denied. Cummings, supra; D'Atria, supra; Comcast, supra. However, Counsel provided the layoff plan responsive to OPRA request Item No. 8 as part of the reconsideration. Thus, the GRC declines to refer this complaint to the Office of Administrative Law to determine the disclosability of the layoff plan because the Complainant is now in possession of the record.
2. The Custodian timely complied with the Council's February 26, 2013 Interim Order within the extended time frame because the Custodian submitted the requisite records to the Complainant and certification to the GRC.
3. The Custodian's failure to respond to the Complainant's OPRA request resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) and the Custodian failed to bear his burden of proving a lawful denial of access to the Complainant's request Item Nos. 2 and 8. However, the Complainant's request Item Nos. 1 and 3 through 7 are invalid. Additionally, the Custodian provided the Complainant with the records responsive to request Item Nos. 2 and 8 as well as Mr. Marasco's legal certification. Thus, the Custodian complied with

the Council's Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

8. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-323)

REQUESTED DOCUMENTS: CD

RECORDS FORMAT REQUESTED: Hardcopies (not by regular mail)

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that due to the contested facts present in this complaint, the GRC will exercise its discretion by referring this matter to the Office of Administrative Law to determine whether there has been an unlawful denial of access. N.J.S.A. 47:1A-7(e). Moreover, the Office of Administrative Law shall also determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access to the responsive records under the totality of the circumstances and whether the Complainant is entitled to an award of prevailing party attorney's fees.

9. Margaret Rieger v. Township of Livingston (Essex) (2011-333)

REQUESTED DOCUMENTS: police reports; permits; documents; photographs; activity logs; correspondence

RECORDS FORMAT REQUESTED: pick up

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends the Custodian has failed to establish in his request for reconsideration of the Council's February 26, 2013 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably. Thus, the Custodian's request for reconsideration is denied. *See Cummings v. Bahr*, 295 N.J. Super. 374 (App. Div. 1996); *D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). As such, the Council's February 26, 2013 Interim Order is continued here, in that this complaint should be referred to the Office of Administrative Law ("OAL") for a hearing to resolve said facts. Further, OAL should also determine if the Custodian knowingly and willfully violated OPRA if found to have unlawfully denied access to the requested records.

10. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-385)

REQUESTED DOCUMENTS: E-mails

RECORDS FORMAT REQUESTED: Electronic via e-mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian did not fully comply with the Council's February 26, 2013 Interim Order because although the Custodian provided nine (9) copies of the unredacted

records and his legal certification to the GRC within the extended time frame, the Custodian failed to also submit a document index.

2. **The *In Camera* Examination set forth in the above table reveals the Custodian has lawfully denied access to the redacted portions of the five (5) records disclosed to the Complainant. N.J.S.A. 47:1A-6.**
  3. The Custodian's response to the Complainant's OPRA request was insufficient because he failed to set forth the specific lawful basis for the redactions made to the responsive e-mails and the Custodian did not fully comply with the Council's February 26, 2013 Interim Order by not providing the required document index. However, as determined by the *in camera* review, the Custodian lawfully denied access to the redactions contained in the responsive records. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
  4. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Custodian lawfully denied access to the redactions contained in the responsive e-mails. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*.
11. Larry Kohn v. Township of Livingston (Essex) (2012-3)  
REQUESTED DOCUMENTS: Purchase order; Invoices  
RECORDS FORMAT REQUESTED: Copies  
EXECUTIVE DIRECTOR'S RECOMMENDATIONS:
1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
  2. The Custodian's failure to respond immediately to the Complainant's OPRA request for invoices and a purchase order results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).

3. The Custodian's written response was insufficient because the Custodian failed to (a) provide a date certain upon which he would respond to the Complainant and (b) specifically state that the requested record did not exist at the time of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008) and Shanker v. Borough of Cliffside Park (Bergen), GRC Complaint No. 2007-245 (March 2009).
4. Because the Custodian certified in the Statement of Information that no record responsive to the Complainant's request item number 1 exists, and because the Complainant did not submit any evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to the requested record. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
5. Notwithstanding the Custodian's "deemed denial," because the Custodian certified in the Statement of Information that on January 10, 2012, he provided to the Complainant all of the records responsive to request item number 2, the Custodian did not unlawfully deny the Complainant access to the records responsive to said request.
6. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) by failing to respond in writing to the Complainant's request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, and violated N.J.S.A. 47:1A-5(e) by failing to immediately respond to the Complainant's OPRA request seeking immediate access records, and insufficiently responded to the Complainant's OPRA request by failing to provide a date certain upon which he would respond to the Complainant and by not stating that a record responsive to the request was nonexistent at the time of the request, the Custodian did not unlawfully deny access to the requested purchase order responsive to request item number 1 because no such record existed at the time of the Complainant's OPRA request. Further, the Custodian did disclose to the Complainant all invoices responsive to request item number 2 as soon as they were located at the Public Works Department. And further, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

12. Rashaun Barkley v. Essex County Prosecutor's Office (2012-34)

REQUESTED DOCUMENTS: Salary; Title; Position; Payroll Record; Date of Separation; Arrest Report

RECORDS FORMAT REQUESTED: Copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian unlawfully denied access to request item no. 1 of the Complainant's OPRA request, with the exception of the pension records which do

not exist. Pursuant to Valdes v. Union City Board of Education (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012), the Custodian should have retrieved the most comprehensive record that contained the requested personnel information and provided same to the Complainant. As such, the Custodian must disclose the records responsive to request item no. 1, with the exception of the pension records which do not exist, to the Complainant.

2. The Custodian unlawfully denied access to request item no. 2 of the Complainant's OPRA request because arrest reports are government records pursuant to N.J.S.A. 47:1A-1.1 and because N.J.S.A. 47:1A-3.b. delineates the specific information contained on an arrest report which must be disclosed to the public. As such, the Custodian must disclose the arrest report to the Complainant.
3. **The Custodian shall comply with items #1-2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

13. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-153)

REQUESTED DOCUMENTS: Agenda; Open Session Meeting Minutes

RECORDS FORMAT REQUESTED: Copies sent via e-mail or fax

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. Since the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, specifically two (2) business days later, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). *See also* Rivera v. City of Plainfield Police Department (Union), GRC Complaint No. 2009-317 (May 2011); Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010); and Paff v. Franklin Fire District No. 1 (Somerset), GRC Complaint No. 2011-77 (June 2012).
2. Because the Custodian failed to provide the Complainant with a written response either granting access, denying access, seeking clarification, or requesting another extension of time within the extended time period, the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), resulting in a "deemed" denial of the Complainant's OPRA request.

3. The unapproved, draft public session meeting minutes from April 2012 constitute inter-agency or intra-agency advisory, consultative, or deliberative material and thus are not government records pursuant the definition of a government record and are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006). Accordingly, the Custodian has borne his burden of proving a lawful denial of access to the draft minutes pursuant to N.J.S.A. 47:1A-6 because the Custodian certified that the requested draft minutes had not been approved by the governing body at the time of the Complainant's request.
4. Pursuant to N.J.S.A. 47:1A-6, the Custodian has failed to bear his burden of proving that he provided the Complainant access to the requested meeting agenda from April 2012. While the Custodian certified that he provided the Complainant with the requested records on May 21, 2012, with the exception of the April 2012 meeting minutes, it is unclear whether the Custodian included the requested April 2012 agenda in his May 21, 2012 response to the Complainant. Moreover, the Complainant asserts in his Denial of Access Complaint that he is not in receipt of the requested agenda. Therefore, the Custodian has unlawfully denied access to the requested April 2012 meeting agenda and must disclose same to the Complainant.
5. **The Custodian shall comply with item #4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
7. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

#### **Individual Complaint Adjudications with no Recusals:**

##### 14. Gary DeMarzo v. City of Wildwood (Cape May) (2009-61)

REQUESTED DOCUMENTS: Report

RECORDS FORMAT REQUESTED: Copy

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends the Council accepts the ALJ's Initial Decision dated March 18, 2013, which concludes: *"Based on the [findings of fact and conclusions of law], I hereby **FIND** that the unlawful denial of access by Christopher Wood was not knowing and willful. Based on this finding, I **ORDER** that the petitioner's complaint against Christopher Wood and the City of Wildwood be **DISMISSED**."*

##### 15. Joan McGee v. Township of East Amwell (Hunterdon) (2009-275)

REQUESTED DOCUMENTS: Attorney Invoices

RECORDS FORMAT REQUESTED: Paper copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that the Council adopt the Administrative Law Judge's ("ALJ") Initial Decision dated March 20, 2013 in which the ALJ approved the Stipulation of Settlement signed by the parties or their representatives disposing of all issues in this complaint. No further adjudication is required.

16. Richard & Dawn Sabik v. Borough of Dunellen (Middlesex) (2011-222)

REQUESTED DOCUMENTS: towing applications; authorization letter; police reports; bids; audio recording; bid information

RECORDS FORMAT REQUESTED: none specified

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. Although the Custodian responded to the Complainant's OPRA request for the towing applications timely and in writing, the Custodian's response is insufficient because he failed to provide a lawful basis for a denial pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) and DeAppolonio, Esq. v. Borough of Deal (Monmouth), GRC Complaint No. 2008- 62 (September 2009). Further, the Council declines to order disclosure of the requested towing applications because the Complainant acknowledges in her Denial of Access Complaint that she received said applications on January 10, 2011.
2. Because the Custodian's response to the Complainant's December 29, 2010 OPRA request for an investigation report failed to specify a lawful basis for a denial to the record sought in the OPRA request and instead stated that the requested record was denied because it had already been provided to the Complainant, the Custodian's response to the Complainant's December 29, 2010 request was insufficient pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006). Further, the Custodian did not bear his burden of proof that he timely responded to the Complainant's January 12, 2011 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's January 12, 2011 OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). The Council declines to order disclosure of the investigation report responsive to the first (1<sup>st</sup>) OPRA request Item No. 4 and the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA requests Item No. 3 because the Custodian certified that he provided a copy of said investigation report on February 7, 2011. Moreover, the Complainant asserted in her Denial of Access Complaint that she received a copy of the investigation report on February 7, 2011, at a Borough meeting.

3. Because the Custodian's response to the Complainant's December 29, 2010 OPRA request for the follow up police investigation report failed to specify a lawful basis for a denial to the record sought in the OPRA request and instead stated that the requested record was denied because it had already been provided to the Complainant, the Custodian's response to the Complainant's December 29, 2010 request was insufficient pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006). The Council declines to order disclosure of the police investigation report responsive to the first (1<sup>st</sup>) OPRA request Item No. 5 and the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA request Item No. 4 because the Custodian certified that he provided a copy of said investigation report on February 7, 2011. Moreover, the Complainant asserted in her Denial of Access Complaint that she received a copy of the follow up police investigation report on February 7, 2011, at a Borough meeting.
4. Because the Complainant's request is overly broad since it fails to specifically identify a government record, said request for the records responsive to the bids received for all auction vehicles responsive to the first (1<sup>st</sup>) OPRA request Item No. 6 is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).
5. Because the Custodian's responses to the Complainant's December 29, 2010 and January 12, 2011 OPRA requests for the additional information related to the auctioning of three (3) vehicles failed to specify a date certain upon which the Complainant could expect disclosure of said records, the Custodian's responses to the Complainant's December 29, 2010 and January 12, 2011 requests were insufficient pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Russomano v. Township of Edison (Middlesex), GRC Complaint No. 2002-86 (July 2003). However, the Council declines to order disclosure of the information pertaining to the auctioning, bid amount, application for title, bill of sale and purchase for three (3) vehicles responsive to the first (1<sup>st</sup>) OPRA request Item No. 7 and second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA requests Item No. 5 because the Custodian certified in the SOI that there was no additional information to provide to the Complainant and the Complainant has provided no competent credible evidence to refute the Custodian's certification. Thus, no additional records responsive to the Complainant's request exist pursuant to N.J.S.A. 47:1A-6. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
6. Because the Custodian's response to the Complainant's December 29, 2010 OPRA request for the authorization letter failed to specify a lawful basis for a denial to the record sought in the OPRA request and instead stated that the requested record was denied because it had already been provided to the Complainant, the Custodian's response to the Complainant's December 29, 2010 request was insufficient pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006).



7. Since there are issues of contested facts, specifically whether the Complainant received a copy of the authorization letter dated October 30, 2009, to the Department of Motor Vehicles responsive to the first (1<sup>st</sup>) OPRA request Item No. 2 and the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA requests Item No. 1, this complaint should be referred to the Office of Administrative Law (“OAL”) to determine whether the Complainant received a copy of the authorization letter. Additionally, if necessary, OAL should make a determination of whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested authorization letter under the totality of the circumstances. *See Semprevivo v. Pinelands Regional School District Board of Education*, GRC Complaint No. 2007-135 (Interim Order October 31, 2007).
  8. Because the Custodian did not bear his burden of proof that the requested \$500.00 deposit was authorized by N.J.S.A. 47:1A-5(f), such deposit is unlawful pursuant to N.J.S.A. 47:1A-5(f); N.J.S.A. 47:1A-6. *See Wolosky v. Township of Mine Hill (Morris)*, GRC Complaint No. 2010-161 (Interim Order December 20, 2011).
  9. Since there are issues of contested facts, specifically whether the Complainant received a copy of the audio recording of the December 6, 2010 Borough Meeting responsive to the first (1<sup>st</sup>) OPRA request Item No. 3 and the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA requests Item No. 2, this complaint should be referred to OAL to determine whether the Complainant received a copy of the audio recording. Additionally, if necessary, OAL should make a determination of whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested audio recording under the totality of the circumstances. *See Semprevivo v. Pinelands Regional School District Board of Education*, GRC Complaint No. 2007-135 (Interim Order October 31, 2007).
17. Paul Marinaccio v. Borough of Fanwood (Union) (2011-226)
- REQUESTED DOCUMENTS: audio recording; police call printout; police report
- RECORDS FORMAT REQUESTED: none specified
- EXECUTIVE DIRECTOR’S RECOMMENDATIONS:
1. The Custodian failed to bear her burden of proving a lawful denial of access because the Custodian’s claimed exemption, N.J.S.A. 10:4-12(b)(7), is not applicable to the requested records. *See N.J.S.A. 47:1A-6*.
  2. The Custodian violated OPRA because the Custodian provided a negligent copy of the audio recording responsive to request Item No. 1 when a complete record existed. *See N.J.S.A. 47:1A-1* and Lopez v. County of Hudson, GRC Complaint No. 2009-267 (March 2011). However, the Council declines to order the Custodian to provide an additional copy of the audio recording responsive to request Item No. 1 because she already made a copy available to the Complainant on April 11, 2012.
  3. The Complainant’s request is overly broad and is invalid under OPRA because the Complainant’s request for Item No. 2 fails to identify specific government

records sought. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

4. The Custodian violated N.J.S.A. 47:1A-6 by failing to provide a lawful basis of denial to the requested records. However, the Custodian made a copy of the requested CD responsive to request Item No. 1 available to the Complainant on April 11, 2012. The Custodian also provided the records responsive to request Item No. 3, as evidenced by the Complainant's letter to the GRC dated March 20, 2013. Lastly, the Complainant's request for records responsive to Item No. 2 fails to specifically identify a government record. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

18. Rita Roykovich v. West Milford Board of Education (Passaic) (2011-258)

REQUESTED DOCUMENTS: Report

RECORDS FORMAT REQUESTED: copies and on-site inspection

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian provided the GRC with a legal certification, the unredacted records requested for the *in camera* inspection and a redaction index on January 10, 2013. Therefore, the Custodian timely complied with the Council's December 19, 2012 Interim Order.
2. The requested report is exempt from disclosure as advisory, consultative or deliberative material because it contains factual and evaluative information which was relied upon by the BOE to determine whether or not to take disciplinary action against staff members involved with the allegations of bullying. See N.J.S.A. 47:1A-1.1, Education Law Ctr. v. N.J. Dept. of Educ., 198 N.J. 274 (2009) and Paff v. Highpoint Regional School Board of Education, Sussex County, Law Division, Docket No. SSX-L-594-12 (December 11, 2012).
3. Here, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved because no relief was ordered by the Council. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the records responsive to the Complainant's requests are exempt pursuant to N.J.S.A. 47:1A-1.1. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*.

19. Ken Schilling v. Township of Little Egg Harbor (Ocean) (2011-293)

REQUESTED DOCUMENTS: Healthcare Benefits - Cost

RECORDS FORMAT REQUESTED: Hard copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that this complaint be dismissed because the Complainant's Counsel withdrew this complaint on behalf of the Complainant in a letter to the GRC dated April 22, 2013. Therefore, no further adjudication is required.

20. Ken Schilling v. Township of Little Egg Harbor (Ocean) (2011-294)

REQUESTED DOCUMENTS: Healthcare Benefits - Cost

RECORDS FORMAT REQUESTED: Hard copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that this complaint be dismissed because the Complainant's Counsel withdrew this complaint on behalf of the Complainant in a letter to the GRC dated April 19, 2013. Therefore, no further adjudication is required.

21. Claudia Vargas (On behalf of The Philadelphia Inquirer) v. Camden City School District (Camden) (2011-315)

REQUESTED DOCUMENTS: payroll records

RECORDS FORMAT REQUESTED: e-mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. Although Custodian's Counsel, on behalf of the School District, provided the records responsive to the Complainant without redactions and within the extended period of time to do so, the Custodian failed to comply with the Council's January 29, 2013 Interim Order because he failed to provide a certified confirmation of compliance to the Executive Director within the required time frame, in accordance with N.J. Court Rule 1:4-4. Thus, the Custodian failed to fully comply with the Council's January 29, 2013 Interim Order.
2. The former Custodian violated N.J.S.A. 47:1A-6 by failing to provide a lawful basis for a denial of access to the requested records because said records are considered payroll records pursuant to N.J.S.A. 47:1A-10. The current Custodian also failed to comply with the Council's January 29, 2013 Interim Order by failing to provide a simultaneous certified confirmation of compliance. However, the Custodian did timely provide the records responsive to the Complainant's request. Therefore, it is concluded that the former and current Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

22. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-319)

REQUESTED DOCUMENTS: instruction manual cover page

RECORDS FORMAT REQUESTED: electronic copy

#### EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The current Custodian timely complied with the Council's March 22, 2013 Order because on April 1, 2013, the fourth (4<sup>th</sup>) business day after receipt of the Council's Order, the Custodian provided certified confirmation of compliance to the Executive Director that he provided the cover page responsive to the Complainant on April 1, 2013.
  2. The former Custodian violated N.J.S.A. 47:1A-6 by failing to prove that he lawfully denied access to the requested cover page. However, the current Custodian timely complied with the Council's March 22, 2013 Interim Order and provided the requested cover page to the Complainant. Therefore, the former Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
  3. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the current Custodian provided responsive records pursuant to the Council's Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Further, an enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law. See New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277 (November 2011).
23. Thomas DelloRusso v. NJ Department of Law & Public Safety, Division of State Police (2012-11)

REQUESTED DOCUMENTS: mobile video recording

RECORDS FORMAT REQUESTED: none specified

#### EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian failed to prove that there was a lawful denial of access to the requested MVR pursuant to N.J.S.A. 47:1A-6, N.J.S.A. 47:1A-9(a) and N.J.S.A. 53:2-3. As such, the Custodian must disclose the MVR responsive to the Complainant's request.

2. **The Custodian shall comply with item #1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

24. John P. Schmidt v. Salem City Board of Education (Salem) (2012-14)

REQUESTED DOCUMENTS: Executive Session Minutes; Resolutions; OPRA Request Form

RECORDS FORMAT REQUESTED: Copies, sent via e-mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian failed to comply with the terms of the Council's March 22, 2013 Interim Order. Specifically, the Custodian failed to disclose to the Complainant the legal basis for each redaction made to the records provided, pursuant to N.J.S.A. 47:1A-5(g). The Custodian also failed to disclose to the Complainant the Board of Education's current OPRA request form and the resolutions that authorized the three (3) most recent Board of Education executive session minutes, regardless of whether the minutes are publically disclosable, or legally certify that the resolutions were already provided to the Complainant with the requested meeting minutes on January 11, 2012. Finally, the Custodian failed to simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.
2. The Custodian unlawfully denied access to the Complainant's request for the Board of Education's current OPRA request form and the resolutions that authorized the three (3) most recent Board of Education executive session minutes, regardless of whether the minutes are publically disclosable. Additionally, the Custodian failed to comply with the any of the terms of the Council's March 22, 2013 Interim Order. The GRC confirmed the Custodian's receipt of said Order via telephone on April 5, 2013. Therefore, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the Office of Administrative Law for determination of whether the custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's March 22, 2013 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51

(2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Council ordered the disclosure of records, as well as the specific legal basis for redactions. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277 (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

25. Paul Marinaccio v. Borough of Fanwood (Union) (2012-23)

REQUESTED DOCUMENTS: Blueprints; Audio Recordings; Video Images; Titles; Salaries; Dates of Service

RECORDS FORMAT REQUESTED: Copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request dated January 23, 2012. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian lawfully denied access to request item nos. 1 and 3 of the Complainant's July 28, 2011 OPRA request because the Custodian legally certified that no records responsive to said request exist, and the Complainant has not provided any evidence to contradict the Custodian's certification.
3. The Custodian unlawfully denied access to request item no. 2 of the Complainant's July 28, 2011 OPRA request on the basis that the Custodian already provided the record under a different venue. *See* Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). However, the Council declines to order disclosure of the recording because despite a "deemed" denial of the Complainant's January 23, 2012 OPRA request for the same recording, the Custodian made the recording available to the Complainant on April 12, 2012.

4. The Custodian unlawfully denied access to request item no. 4 of the Complainant's July 28, 2011 OPRA request on the basis that the request is not a proper OPRA request. Pursuant to Valdes v. Union City Board of Education (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012), the Custodian should have retrieved the most comprehensive record that contained the requested personnel information and provided same to the Complainant. *See also* Morgano v. New Jersey Department of Treasury, Division of Pensions & Benefits, GRC Complaint No. 2011-145 (Interim Order dated December 18, 2012). As such, the Custodian must disclose the records responsive to request item no. 4 to the Complainant.
  
5. The Custodian failed to address request item nos. 2-3 of the Complainant's January 23, 2012 OPRA request in the Custodian's SOI submission. As such, the Custodian failed to bear her burden of proving a lawful denial of access, or prove that the Custodian actually responded to the request, pursuant to N.J.S.A. 47:1A-6. Therefore, the Custodian must disclose the records responsive to request item no. 2 of the Complainant's January 23, 2012 OPRA request, or alternatively certify that no records responsive exist, if such is the case. The Custodian need not disclose records responsive to request item no. 3 because said request is invalid since it is an open-ended request failing to identify a date or date range for the video recording. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (holding that "OPRA does not countenance open-ended searches of an agency's files." *Id.* at 549).
  
6. **The Custodian shall comply with item nos. 4-5 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
  
7. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

26. Judith Papiez v. County of Mercer, Office of County Counsel (2012-52)

REQUESTED DOCUMENTS: Cell Phone data reports

RECORDS FORMAT REQUESTED: Electronic via e-mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian timely complied with the Council's March 22, 2013 Interim Order by submitting certified confirmation of compliance that she provided the responsive call detail logs (with redactions) to the Complainant on April 1, 2013

2. The Custodian lawfully denied access to the telephone numbers contained in the logs since the Custodian redacted the responsive call detail logs consistent with the Council's holding in Livecchia v. Borough of Mount Arlington (Morris), GRC Complaint No. 2008-80 (Interim Order dated November 18, 2009). N.J.S.A. 47:1A-6.
3. The Custodian's response to the Complainant's OPRA request was insufficient because she failed to provide a date certain upon which she would provide the responsive records to the Complainant and the Custodian further unlawfully denied access to the requested call detail logs. N.J.S.A. 47:1A-5(i), 47:1A-6. However, the Custodian timely complied with the Council's March 22, 2013 Interim Order and further lawfully redacted the responsive logs. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

27. Judith Papiez v. County of Mercer, Office of County Counsel (2012-55)

REQUESTED DOCUMENTS: Log books; inspection reports; repair orders

RECORDS FORMAT REQUESTED: Electronic via e-mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that this complaint be dismissed because the Complainant withdrew her complaint in an e-mail to the GRC dated April 16, 2013. Therefore, no further adjudication is required.

28. Judith Papiez v. County of Mercer, Office of County Counsel (2012-65)

REQUESTED DOCUMENTS: Annual Drug & Alcohol testing summaries

RECORDS FORMAT REQUESTED: Electronic via e-mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that this complaint be dismissed because the Complainant withdrew her complaint in an e-mail to the GRC dated April 16, 2013. Therefore, no further adjudication is required.

29. Henry Little v. NJ Department of Corrections (2012-70)

REQUESTED DOCUMENTS: Medical Records; Psychological Records

RECORDS FORMAT REQUESTED: Copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The original Custodian lawfully denied access to the requested records because the Complainant's July 27, 2006 OPRA request clearly seeks medical and psychological records which are specifically exempt from public access pursuant to Executive Order No. 26 (McGreevey 2002).



2. The Complainant's October 25, 2011 request is not a valid OPRA request because the Complainant's October 25, 2011 records request was not submitted using any official OPRA request form, and because the Inmate Request Form MR-022 does not reference OPRA anywhere. As such, no unlawful denial of access exists because the Complainant did not invoke OPRA.

30. Harry B. Scheeler, Jr. v. Township of Mt. Laurel (Burlington) (2012-83)

REQUESTED DOCUMENTS: E-mails

RECORDS FORMAT REQUESTED: Electronic via e-mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian unlawfully denied access to portions of the responsive 23 pages of records responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the responsive e-mails with appropriate redactions for information exempt under Executive Order No. 26 (McGreevey, 2002). *See Mendes v. Freedom Academy Charter School (Camden)*, GRC Complaint No. 2009-184 (Interim Order dated August 24, 2010) and *Ray v. Freedom Academy Charter School (Camden)*, GRC Complaint No. 2009-185 (Interim Order dated May 24, 2011).
2. **The Custodian shall comply with item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

31. John McGill v. NJ Department of Corrections (2012-90)

REQUESTED DOCUMENTS: Cancelled Check; Ledger

RECORDS FORMAT REQUESTED: Paper copy via U.S. Mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that since the Complainant is seeking records containing information about the victim of the Complainant's crime(s), the records responsive to the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2. Thus, the Custodian lawfully denied access to the responsive records. The GRC declines to address whether Executive Order No. 26 (Gov. McGreevey, 2002) applies to the responsive records because they are already deemed exempt pursuant to N.J.S.A. 47:1A-2.2.

32. Virginia Ann Murphy v. Township of Washington (Gloucester) (2012-96)

REQUESTED DOCUMENTS: Video Recording

RECORDS FORMAT REQUESTED: Copy via pickup

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian failed to bear her burden of proving a lawful denial of access to the requested unedited video pursuant to N.J.S.A. 47:1A-6, Meyers v. Borough of Fair Lawn (Bergen), GRC Complaint No. 2005-127 (May 2006), and Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). Thus, the Custodian must obtain same from the Mayor and disclose the record accordingly.
2. **The Custodian shall comply with item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

33. Jeff Carter v. Franklin Fire District #2 (Somerset) (2012-101)

REQUESTED DOCUMENTS: Records destruction forms

RECORDS FORMAT REQUESTED: Electronic via e-mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian did not bear his burden of proof that he responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, supra. See also Keelen v. City of Long Branch (Monmouth), GRC Complaint No. 2007-141 (October 2007) and Charles v. Plainfield Municipal Utilities Authority (Union), GRC Complaint No. 2009-113 (May 2010).
2. Since the Custodian certified in the Statement of Information that no responsive records exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to the requested records. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). See also Kossup v. City of Newark (Essex), GRC Complaint No. 2009-135 (February 2010)(holding that although the custodian failed to respond to the complainant's OPRA request, he did not unlawfully deny access to any records because the OPRA manager certified in the SOI that no records existed).

3. Although the Custodian's failure to timely respond to the Complainant's OPRA request resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the Custodian did not unlawfully deny access to the responsive records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. *See* Nolan v. West Milford Municipal Utilities Authority (Passaic), GRC Complaint No. 2011-229 (August 2012). Therefore, it is concluded that the Custodian's untimely response did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, no responsive records exist and the Custodian's technical violation did not result in a change in the Custodian's conduct. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. *See* N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra.

34. Colleen O'Dea v. NJ Department of Agriculture (2012-108)

REQUESTED DOCUMENTS: Farmland Assessment forms

RECORDS FORMAT REQUESTED: Electronic copies via e-mail or hardcopies via pickup

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that the Custodian did not unlawfully deny access to the requested records because the Custodian initially responded and certified in the Statement of Information that no records responsive to the Complainant's OPRA request exist and because the Complainant did not submit any evidence to refute the Custodian's certification. *See* Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

35. Colleen O'Dea v. NJ Department of Treasury (2012-109)

REQUESTED DOCUMENTS: Farmland Assessment forms

RECORDS FORMAT REQUESTED: Electronic copies via e-mail or hardcopies via pickup

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. The Custodian did not unlawfully deny access to the requested records since the Custodian initially responded and subsequently certified in the Statement of Information that no responsive records to the Complainant's OPRA request exists because the records were held by the United States Department of Agriculture and because the Complainant did not submit any evidence to refute the Custodian's

certification in this regard. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

2. The GRC does not have the authority to order the United States Department of Agriculture to provide the responsive records back to New Jersey Department of Treasury so that the Custodian may comply with the Complainant's OPRA request because the United States Department of Agriculture is a Federal agency subject only to the provisions of Freedom of Information Act and not OPRA., N.J.S.A. 47:1A-7(b).

36. John Paff v. Northern Valley Regional School District (Bergen) (2012-110)

REQUESTED DOCUMENTS: executive session minutes; resolutions

RECORDS FORMAT REQUESTED: electronic copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

1. Due to the specific facts in this case, the Custodian did not unlawfully deny access to the requested records because the Custodian's assessed \$0.40 charge for eight (8) pages of responsive records was reasonable and lawful because the Custodian did not want to risk damaging original records. Further, the Custodian did not unlawfully deny access to the requested records because the records were provided to Complainant's Counsel within the seven (7) business day time period. See N.J.S.A. 47:1A-5(b), Paff v. Township of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order May 24, 2011) and Paff v. Gloucester City (Camden), GRC Complaint No. 2009-102 (Interim Order April 8, 2010).
2. The Complainant has not achieved the desired outcome as a result because of the complaint did not bring about a change (voluntary or otherwise) in the Custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). No factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Custodian's assessed \$0.40 copying charge was reasonable and lawful under OPRA. The Custodian provided the responsive records within the statutory timeframe, even though he was legally entitled to await payment of the \$0.40 prior to doing so. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra.

37. Michael Palmer v. Irvington Police Department (Essex) (2012-123)

REQUESTED DOCUMENTS: Witness Statements; Crime Scene Photographs; Incident Report; Standard Operating Procedures

RECORDS FORMAT REQUESTED: Copies

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends the Council find that the Custodian failed to respond to the GRC's requests for a Statement of Information, which is the

Custodian's opportunity to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6. Based on the inadequate evidence in this matter, the GRC is unable to determine whether the Custodian lawfully or unlawfully denied access to the requested records, or whether the requested records even exist on file with the Irvington Police Department. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

38. James E. Howell v. NJ Department of Homeland Security & Preparedness (2012-141)

REQUESTED DOCUMENTS: N/A

RECORDS FORMAT REQUESTED: Hard copies via U.S. Mail

EXECUTIVE DIRECTOR'S RECOMMENDATIONS:

The Executive Director respectfully recommends that the Complainant's request is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>1</sup> New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), because it seeks information and not specific, identifiable government records. *See also* Kulig v. Cumberland County Board of Freeholders, GRC Complaint No. 2008-263 (November 2009). The GRC declines to address the proposed exemptions raised by the Custodian because the request is deemed to be invalid.

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<sup>1</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).